In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1201

100 ACRES OF LAND, MORE OR LESS,
IN MARIN COUNTY, STATE OF CALIFORNIA,
DRAKE'S BEACH ESTATES, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 468 F. 2d 1261.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 1972 (Pet. App. C). A timely petition for rehearing was denied on December 6, 1972 (Pet. App. D). The petition for a writ of certiorari was filed on March 3, 1973. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether an appropriate rate of interest was applied to the judgment in this condemnation case.

2. Whether attorneys' fees and costs should be awarded to a condemnee in a federal eminent domain proceeding.

STATEMENT

The United States purchased 850 acres of land for the Point Reyes National Seashore in California from Drake's Beach Estates, Inc. As part of the settlement on that land, the United States brought condemnation proceedings against about 100 acres of adjacent land, title to which was in dispute.[1] In the resultant condemnation proceeding, the trial court sitting alone found that Drake's Beach had title to the 100 acres; a jury trial on the issue of valuation followed. After the valuation trial, the district court denied Drake's Beach's motions for interest on the compensation award at a rate in excess of the six percent provided by the Declaration of Taking Act, 46 Stat. 1421, 40 U.S.C. 258a, and for attorneys' fees and trial costs. The district court stated that it would have awarded interest at the rate of seven percent were it not for the statute. On Drake's Beach's appeal,[2] the court of appeals

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[1] The settlement, dated July 20, 1963, required the United States to file a declaration of taking of the 100 acres within four months. Drake's Beach agreed that, in the event it was determined that Drake's Beach had title to the 100 acres, it would waive payment of any compensation award for three years, and interest on any award would not begin accruing until August 31, 1965. The settlement did not specify the rate of interest to be applied after August 31, 1965, and did not provide for the payment of attorneys' fees or costs.

[2] The United States appealed on the title and valuation issues. We are filing a petition for a writ of certiorari to review the court of appeals' affirmance of the district court's decision on those issues.

affirmed. With respect to the rate of interest, the court held that the matter was a question of fact for the jury to decide and that Drake's Beach was foreclosed from seeking a higher rate since it had not presented any evidence on the issue to the jury.

ARGUMENT

Although we believe the court of appeals erred in ruling that the jury, rather than the court, should determine what rate of interest should be applied to a condemnation award, it reached the right result in affirming the district court's award of six percent. Accordingly, review by this Court is unwarranted. This Court has stated that a jury in a federal eminent domain proceeding is to decide only the issue of valuation of the property taken. All other matters are for the district court alone to decide. *United States* v. *Reynolds*, 397 U.S. 14. Drake's Beach's claims at issue here were properly considered and rejected on the merits by the district court.

Interest is normally due in condemnation on the difference between the final award and the sum the government deposits in the registry of the court on filing its declaration of taking. The landowner is entitled to the monetary equivalent of his land at the time the land is taken, and the land is usually taken on the day the government's declaration is filed. *United States* v. *Miller*, 317 U.S. 369, 381. Interest is compensation for the time the United States has both the landowner's property and his money. *Kieselbach* v. *Commissioner*, 317 U.S. 399, 403-404. Drake's Beach contends that the statutory interest rate of six percent provided for by the Declaration of Taking Act, 46 Stat. 1421, 40 U.S.C. 258a, is not fully compensatory, since rates higher than six percent were being commercially charged at

the time its land was taken.[3] Reference to Standard and Poor's Trade and Security Statistics, however, shows that from 1965 through 1972 the United States on the average paid less than six percent on its commercial bonds. Accordingly, Drake's Beach was fully compensated by the six percent rate provided by the Declaration of Taking Act.

Unlike the payment of interest, there is no constitutional right to the payment of costs and attorneys' fees in condemnation proceedings. *Kieselbach* v. *Commissioner*, 317 U.S. 399, 404. The United States pays in condemnation only for what it takes. *United States* v. *Fuller*, 409 U.S. 488; *United States* v. *General Motors Corp.*, 323 U.S. 373, 377-379. "Attorneys' fees and expenses are not embraced within just compensation for land taken by eminent domain." *Dohany* v. *Rogers*, 281 U.S. 362, 368. See also *Fleischmann Corp.* v. *Maier Brewing*, 386 U.S. 714, 717. And, as Chief Justice Marshall stated in *United States* v. *Barker*, 2 Wheat. 395: "The United States never pay costs." See also *United States* v. *Knowles' Estate*, 58 F. 2d 718, 719 (C.A. 9). There is no statute waiving that proposition in this case. The district court thus did not err in refusing to award costs and attorneys' fees.

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[3] The land at issue was taken in 1963. In 1972, the United States deposited with the court a sum equal to the judgment plus six percent interest. The interest payments at issue relate only to the period after August 31, 1965. See note 1, *supra*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
WALLACE H. JOHNSON,
Assistant Attorney General.
EDMUND B. CLARK,
RAYMOND N. ZAGONE,
CARL STRASS,
Attorneys.

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